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AUG 19 2005

OFFICE OF PETITIONS

In re Application of
Badcock et al.
Application No. 10/810,345
Filed: March 26, 2004
Attorney Docket Number: F0416
Title: Monitor for an Optical Fibre and Multi-
Guide Optical Fibre Circuits and Methods of
Making Them

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: DECISION REFUSING STATUS
: UNDER 37 C.F.R. §1.47(b)
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:
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This is in response to the renewed petition under 37 C.F.R. §1.47(b), filed March 28, 2005.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on March 26, 2004, without an executed oath or declaration. Accordingly, on June 7, 2004, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring, for the purposes of this decision, an executed oath or declaration in compliance with § 1.63 and a surcharge for its late filing. This Notice set an extendable two-month period for reply of August 7, 2004. A petition under 37 CFR 1.47 was dismissed on January 27, 2005.

In reply, applicant filed the instant petition, the surcharge for late filing of the declaration, and a declaration.

A grantable petition under 37 C.F.R. §1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is necessary to preserve the rights of parties or to prevent irreparable damage. Rule 47 applicant has failed to establish item (1).

Proof of Refusal to Sign the Oath or Declaration

As to item (1), Rule 47 applicant has failed to show that the non-signing inventors refused to sign the declaration after having been presented with the application papers. The statement of facts provided states inventors Badcock and Giles "had access to above-noted patent application". Rule 47 applicant should explain further what access to the patent application the non-signing inventors had. Further the letter from Badcock states that he did not receive the patent application which was purportedly mailed with the correspondence from RMS Technical Consultants, Ltd. The letter to inventor Giles only mentions assignment documents. There is no indication that application papers (specification, including claims, drawings) were ever presented to inventors Badcock and Giles. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventors. If such an attempt was made rule 47 applicant should provide a statement to that effect and any documentary evidence to establish an attempt was made.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

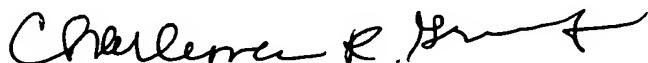
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Telephone inquiries regarding this decision should be directed to the undersigned at
(571) 272-3215.



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